

Sumter City-County Board of Appeals

April 14, 2010

BOA-10-10, 1227 S. Guignard (County)

I. THE REQUEST

Applicant: L.H. Watford

Status of the Applicant: Property Owner

Request: A variance from the strict application of Article 8, Section J of the Sumter City Zoning Ordinance, parking and landscaping retrofitting requirements.

Location: 1227 S. Guignard Dr.

Present Use/Zoning: Vacant former mercantile/General Commercial, Highway Corridor Protection District (GC/HCPD)

Tax Map Reference: 226-13-01-025

Photo of the building at 1227 S. Guignard Dr.:



II. BACKGROUND

The applicant, L.H. Watford, is requesting a variance from the landscaping, parking, and curbing requirements for retrofitting parking lots on a .55 acre commercial property in the County of Sumter. The applicant has submitted a landscaping plan. As such this is not a request for a 100% variance.

The applicant intends to lease the property. A potential tenant recently submitted a business license to open a beauty salon. Currently, the subject property has a small, 950 sq. ft. building on the site formerly used as a market and as a used car location. There is no landscaping and no curbing; there is an open parking area unpaved with a packed sand/gravel surface. For the proposed and pending use, 5 parking spaces are required.

The property has had no business activity for some time. As it has been longer than six months since any commercial activity took place on site, the applicant must comply with Section 6.g.1 and Section 8.j.3 of the City Zoning Ordinance which states:

- **Article 6, Section G: Retrofitting Parking Lots, Buffers, and Landscaping.**

6.g.1 It shall be the responsibility of owners of property to comply with the provisions of 8.d.11 of this Ordinance.

8.d.11 Retrofitting Under Prevailing Landscaping, Buffering, and Parking Lot Landscaping Standards:

As per Article Six, Section G of this Ordinance, any commercial or industrial activity which remains vacant on a parcel of land for a six (6) month period, and re-opens as the same use or different use (which may be permitted in the zoning district) shall meet all the standards of this Article.

8.b.6 Landscape Design:

- a. Reasonable landscaping should be provided at site entrances, in public areas, in parking lots, adjacent and around the perimeter of buildings. All landscaped areas shall be irrigated and placed on a timer system. The type and amount of landscaping required shall be allowed to vary with the type of development*
- b. The plant or other landscaping material that best serves the intended function shall be selected. Landscaping materials shall be appropriate for the local climate, soil conditions, and general site characteristics.*

8. j. 3.b Design Requirements:

- b. Surfacing, Drainage and Maintenance: Off-street parking facilities shall be properly graded for drainage to prevent damage to abutting property and/or public streets and alleys. Parking lots shall be surfaced with asphalt, concrete, or other surfaces approved by the Sumter City-County Planning Commission. Off street parking lots shall include concrete curbs and gutters, maintained in a clean, orderly and dust-free condition, and not used for the sale, repair or the dismantling or servicing of any vehicles, equipment, materials or supplies. (Note: For places of Worship (SIC 866) that only use their facilities a maximum of two days per week, the required parking spots do not have to be paved, and curb and gutter is not required. Any additional use beyond two days per week requires full compliance with the above paragraph.)*

LANDSCAPING AND RETROFITTING REQUIREMENTS OF THE ORDINANCE

The property must be retrofitted to include the following landscaped areas:

- 10 foot-wide bufferyard located out of the public ROW along both streets
- 5 foot-wide bufferyard along the interior sides of the parking lot
- Parking lot trees
- Curb and gutter
- Service area for garbage collection and utilities shall be screened and/or fenced to the equivalent of a five-foot bufferyard or privacy fence or some combination of the two.
- Plantings shall be watered regularly by an automatic and timed irrigation system or other acceptable methods of periodic watering.
- Plant materials shall be of sufficiently large and planted in such a fashion that a year-round screen at least six (6) feet in height shall be produced within three (3) growing seasons. All plantings shall be installed according to acceptable horticultural standards.
- Deciduous street trees must have straight trunks and be of two-inch (2”) caliper at time of planting. They must be placed at intervals of forty (40) feet or else shall have smaller understory trees planted in between.
- A site landscaping plan must be submitted and approved by staff at the Sumter City-County Planning Department because of the property’s location within the Highway Corridor Protection District (HCPD).

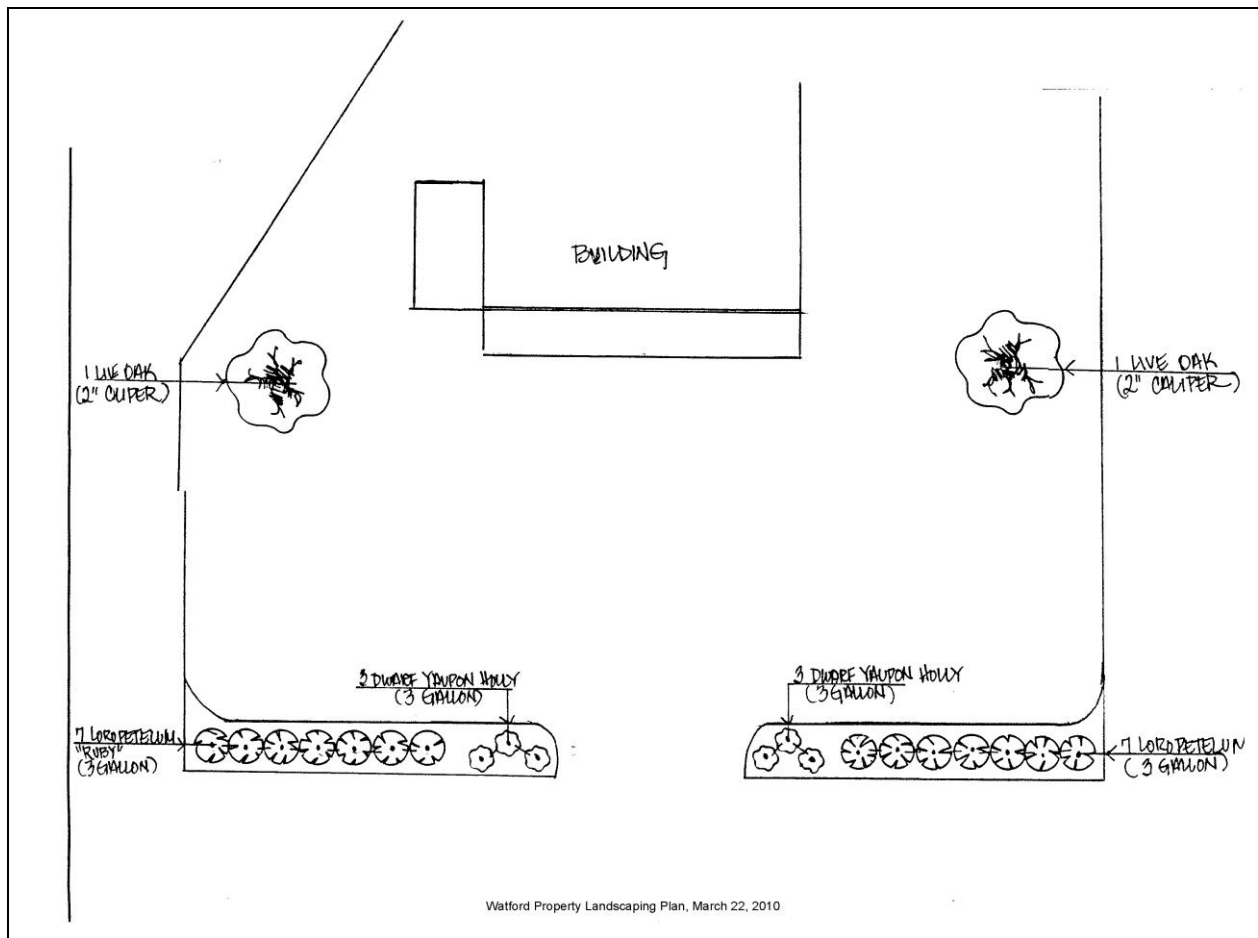
A note to this issue: The Planning Commission has directed Planning Staff to review and draft an amendment to the non-conforming use section of the Zoning Ordinance to better address non-conforming sites. Staff is working on an approach which would require reasonable improvements to a non-conforming site in a manner directly proportional to the scale of the project, improvement, investment or property. A draft amendment will likely be reviewed by the Planning Commission in June of 2010.

III. THE REQUEST

The applicant is seeking the variance because the updates required by the ordinance are not cost effective with current economic conditions. The applicant contends that the strict application of the zoning ordinance requirements would render the property unmarketable and unusable. Simply put, the cost of the improvements dwarf the market rent that can be paid at this time. The applicant has provided an estimate on the costs of paving the parking lot in the amount of \$19,580. Add curb, irrigation, and landscaping materials to this and the cost likely exceeds \$30,000.

It should be noted that the interior up fit for the beauty salon is minimal.

In response to this request Planning Department Staff met with the applicant to discuss reasonable and incremental improvements to the site. The Applicant responded with a landscaping plan focused on plantings along the front on the property facing S. Guignard.



This plan shows:

- Two, two inch caliper Oak trees in the Parking Area
- Six, three gallon dwarf Yaupon Holly
- Fourteen, three gallon, Loro Petelum
- Eight foot, front planter bed
- *Note: plant material may be relocated to accommodate utility easements*

IV. FOUR-PART TEST

1. *There are extraordinary and exceptional conditions pertaining to the particular piece of property.*

There are extraordinary or exceptional conditions pertaining to this particular piece of property based on the following:

- The property is an existing building that is located in the Highway Design Corridor. It is however, similar to many other buildings located in the immediate area in that it was built and the site was developed prior to the current ordinance,

and is therefore nonconforming as to parking lot improvements and landscaping. But, this site is significantly non-conforming with sand parking lot, no curbing, zero landscaping etc. The building has been vacant for some time, and the applicant has been unsuccessful in finding a tenant because of the issue of updating the site to meet current ordinance standards.

2. *These conditions do not generally apply to other property in the vicinity.*

These conditions *do* not generally apply to other properties in the vicinity based on the following:

- The property is overwhelmingly non-conforming. There is no landscaping, paved parking, curbing or irrigation. The small (950 sq. ft.) building is limited in its utility. This combination makes this particular property distinct in the area.

3. *Because of these conditions, the application of the ordinance to the particular piece of property would effectively prohibit or unreasonably restrict the utilization of the property.*

Absolute application of the ordinance requirement *will prohibit* or unreasonably restrict the utilization of this property due to the following:

- Parking and landscaping are a requirement of the ordinance and therefore must be complied with and is calculated according to the proposed use. However, in some cases, the costs associated with meeting all of the ordinance requirements appear to outweigh the ability of the market to absorb the costs through rent or purchase—market rents or the value of the property are not comparable to the costs of upgrading the non-conforming lots. The net result to all of this is that vacancy rates and the time lots remain vacant have increased, in part, we suspect, to the strict requirements.

4. *The authorization of a variance will not be of substantial detriment to adjacent property or to the public good, and the granting of the variance will not harm the character of the district.*

- Developing this property with the variances *will not be* of substantial detriment to adjacent property or to the public good. The intent of the non-conforming use section of the zoning ordinance is to remove or eliminate non-nonconforming uses, structures, and sites. Theoretically, non-conforming sites should be redesigned or retrofitted as directed by the ordinance to meet the current standards of the ordinance.

However, we find that incremental and reasonable improvements to overwhelmingly non-conforming sites better meets the public good than continuously vacant parcels. Experience has shown that the costs of upfitting can unreasonably restrict a parcel.

Moreover, the applicant has offered a landscaping plan which incrementally improves the design aesthetic of this site. Today there is no landscaping on site. This project proposes to add a relatively significant upgrade to the landscaping.

V. STAFF RECOMMENDATION

Staff recommends approval of BOA-10-10 based on the fact that the requirements of the Four-Part Test are met. We believe this reasonable and proportionate approach is in the public interest. While we do not envision a time where the four part test supports a 100% variance for all site standards, the public good is served when reasonable improvement can be absorbed by property owners in the course increased business and tenancy. Frankly, a new business with a little landscaping and parking, short of full ordinance conformance, is much better than a vacant, 100% non-conforming site.

VI. DRAFT MOTIONS for BOA-10-10

- A.** I move that the Sumter Board of Appeals approve BOA-10-10, subject to the findings of fact and conclusions contained in the draft order dated April 14, 2010 attached as Exhibit 1.
- B.** I move that the Sumter Board of Appeals deny BOA-10-10 on the following findings of fact and conclusions:

VII. ZONING BOARD OF APPEALS – APRIL 14, 2010

The Sumter City-County Board of Appeals at its meeting on Wednesday, April 14, 2010, voted to approve this request, subject to the findings of fact and conclusions on exhibit 1.

Exhibit 1
Order on Variance Application
Sumter Board of Appeals

BOA-10-10, 1227 S. Guignard Dr., Sumter, SC.
April 14, 2010

Date Filed: April 14, 2010

Permit Case No. BOA-10-10

The Board of Zoning Appeals held a public hearing on Wednesday, April 14, 2010 to consider the request of L.H. Watford, 1227 S. Guignard Dr., Sumter, SC 29150 for a variance from the strict application of the Zoning Ordinance as set forth on the Form 3 affecting the property described on Form 1 filed herein. After consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the Applicant ☒ **has** - ☐ **does not have** an unnecessary hardship because there are extraordinary and exceptional conditions pertaining to the particular piece of property based on the following findings of fact:

The property is an existing building that is located in the Highway Design Corridor. It is however, similar to many other buildings located in the immediate area in that it was built and the site was developed prior to the current ordinance, and is therefore nonconforming as to parking lot improvements and landscaping. But, this site is significantly non-conforming with sand parking lot, no curbing, zero landscaping etc... The building has been vacant for some time, and the applicant has been unsuccessful in finding a tenant because of the issue of updating the site to meet current ordinance standards.

2. The Board concludes that these conditions ☐ **do** - ☒ **do not** generally apply to other property in the vicinity based on the following findings of fact:

The property is overwhelmingly non-conforming. There is no landscaping, paved parking, curbing or irrigation. The small (950 sq. ft.) building is limited in its utility. This combination makes this particular property distinct in the area.

3. The Board concludes that because of these conditions, the application of the ordinance to the particular piece of property ☒ **would** - ☐ **would not** effectively prohibit or unreasonable restrict the utilization of the property based on the following findings of fact:

Parking and landscaping are a requirement of the ordinance and therefore must be complied with and is calculated according to the proposed use. However, in some cases,

the costs associated with meeting all of the ordinance requirements appear to outweigh the ability of the market to absorb the costs through rent or purchase—market rents or the value of the property are not comparable to the costs of upgrading the non-conforming lots. The net result to all of this is that vacancy rates and the time lots remain vacant have increased, in part, we suspect, to the strict requirements.

4. The Board concludes that authorization of the variance ☐will –☒will not be of substantial detriment to adjacent property or to the public good, and the character of the district ☐will - ☒will not be harmed by the granting of the variance based on the following findings of fact:

Developing this property with the variances will not be of substantial detriment to adjacent property or to the public good. The intent of the non-conforming use section of the zoning ordinance is to remove or eliminate non-nonconforming uses, structures, and sites. Theoretically, non-conforming sites should be redesigned or retrofitted as directed by the ordinance to meet the current standards of the ordinance.

However, we find that incremental and reasonable improvements to overwhelmingly non-conforming sites better meets the public good than continuously vacant parcels. Experience has shown that the costs of unfitting can unreasonably restrict a parcel.

Moreover, the applicant has offered a landscaping plan which incrementally improves the design aesthetic of this site. Today there is no landscaping on site. This project proposes to add a relatively significant upgrade to the landscaping.

THE BOARD, THEREFORE, ORDERS that the variance is ☐ DENIED –☒ GRANTED, subject to the following conditions:

The applicant will provide landscaping as required under the ordinance.

Approved by the Board by majority vote.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.